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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/065,857	11/26/2002	Kenneth J. Ruff	714466.2	3380

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EXAMINER

LOFDAHL, JORDAN M

ART UNIT PAPER NUMBER

3644

DATE MAILED: 08/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/065,857

Applicant(s)

RUFF, KENNETH J.

Examiner

Jordan Lofdahl

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 June 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) 7,8,11-14 and 18-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,9,15-17 and 21-25 is/are rejected.
- 7) ☒ Claim(s) 4-6 and 10 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION***Election/Restrictions***

Claims 7, 8, 11-14 and 18-20 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 6/24/04.

Applicant's election with traverse of election of Species B: fig. 6-9 in the reply filed on 6/24/04 is acknowledged. The traversal is on the ground(s) that the restriction should have been set forth in terms of claims and not the figures. This is not found persuasive because the applicants disclosure explicitly states that there are different embodiments (read as species) of the invention as shown in the drawings. MPEP 809.02(a) states that species are preferably identified as figures, which the examiner clearly showed in the mailed restriction. Although the examiner was incorrect in not listing the entire list of generic claims, other than claims 1 and 26, it does ^{not} deem the restriction improper.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 103

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The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-3, 9, 15-17 and 21-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ritter (2417178) and further in view of Stewart (6269774).

As to claim 1, Ritter discloses a receptacle (11) formed of a flowerpot, defining an interior and having a first and second end and a continuous side wall extending between the first and second end, the side wall having an opening (12); and a top (13) formed of a clay flowerpot positioned coaxially and adjacent the first end of the receptacle and opening downward, said second flowerpot being connected to the first flowerpot forming an accessory (fig. 2). Not disclosed are a plurality of through openings on the side wall. Stewart, however, discloses a plurality of through openings (36, 44 and 47) on a side wall. It would have been obvious to one having ordinary skill in the art at the time the invention was made to comprise the device of Ritter, with the through openings of Stewart for attaching a perch and/or drainage.

As to claim 2, disclosed is the top disposed in position at the first end of the receptacle to provide a cover.

As to claim 3, disclosed is ceramic flowerpot saucer (13).

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As to claim 9, disclosed is a device, as modified, comprising through openings disposed and spaced apart from one another.

As to claim 15, disclosed are a plurality of through openings including an opening which is larger than the others ('178, fig. 1).

As to claim 16, disclosed is the larger opening sized and spaced for access of a bird that is capable of being a bluebird.

As to claim 17, disclosed is the larger opening sized and spaced for access of a bird that is capable of being a wren.

As to claim 21, disclosed are a plurality of openings are sized and positioned around the perimeter of the receptacle capable of permitting ready access by a bird to birdseed disposed in the receptacle.

As to claim 22, disclosed are the holes sized and capable of being sized for sunflower seeds.

As to claim 23, disclosed are the holes sized and capable of being sized for thistle seeds.

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As to claim 24, disclosed is are the exterior surfaces made waterproof (painting of the surface is read to be capable of waterproofing).

Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ritter (2417178) in view of Stewart (6269774) and further in view of Scalf (6691641).

As to claim 25, not disclosed is silicone coating. Scalf, however, discloses a silicone coating (col. 13, lines 33-55). It would have been obvious to one having ordinary skill in the art at the time the invention was made to comprise the device, as modified, of Ritter, with the silicone coating of Scalf, to create a protect the device from the environment.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 26 is rejected under 35 U.S.C. 102(b) as being anticipated by Ritter (2417178).

As to claim 26, the method steps of the instant claim are readily apparent during the operation of the device of Ritter.

Allowable Subject Matter

Claims 4-6 and 10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jordan Lofdahl whose telephone number is 703.605.1217. The examiner can normally be reached on m-f 9-5.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 703.306.4198. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jml



MICHAEL J. CARONE
SUPERVISORY PATENT EXAMINER